

# Section 206 – Uniformed Services Rights and Protections

Section 206 of the Congressional Accountability Act (CAA) applies certain rights and protections of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) to covered employees. Under provisions of the USERRA, as made applicable by the CAA, covered employees performing service in the uniformed services are protected from discrimination on the basis of such service, denial of reemployment rights, and denial of employment benefits. The Office of Compliance applies the most relevant substantive Executive Branch USERRA regulations.

## 1. Coverage

An eligible employee means a covered employee performing service in the uniformed services. The covered employee may not have been terminated from the service by dishonorable or bad conduct discharge; separated under other than honorable conditions; dismissed by a general court-martial, by commutation of sentence, or by order of the President in time of war; or dropped from the rolls because of absence without authority for three months, or because sentenced to confinement.

“Service in the uniformed services” means service in the Armed Forces, the National Guard, the Public Health Service, or any other category designated by the President during time of war or emergency.

The covered employees and employing offices subject generally to the CAA are described in the “Covered Employees” section of the *CAA Handbook* and the Office of Compliance web site ([www.compliance.gov](http://www.compliance.gov)).

## 2. Discrimination Prohibited

An employing office may not deny initial employment, reemployment, retention in employment, promotion, or any benefit of employment to an eligible employee on the basis of the employee’s service or application for service in the uniformed services.

## 3. Right to Reemployment

An eligible employee who leaves work to serve in the uniformed services has certain rights to reemployment to the same position he or she left or to a position of like seniority, status, and pay. An eligible employee’s reemployment rights are conditioned on certain factors, including:

- ◆ the employee must give advance notice of service to the employing office when possible; and
- ◆ the cumulative length of the employee’s absence and of all previous absences from a position of employment with the current employing office because of service in the uniformed services may not exceed 5 years.

## 4. Limitations on Reemployment Obligations for Employing Offices

An employing office is not required to reemploy a covered employee returning from service in the uniformed services if any of the following circumstances exists:

- ◆ The employer’s circumstances have so changed that reemployment of the covered employee is unreasonable or impossible

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- ◆ Reemployment would impose an undue hardship on the employer
- ◆ The original employment of the covered employee was for a brief, nonrecurrent period and there was no reasonable expectation that such employment would continue indefinitely or for a substantial period

The employing office will have the burden of proving the existence of the circumstance in question.

## 5. Benefits

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A reemployed employee is entitled to the seniority and other seniority-based rights and benefits that the employee had on the date he or she began service in the uniformed services, plus any additional seniority and seniority-based rights and benefits for which the employee would have been eligible had he or she remained continuously employed.

An eligible employee may elect to continue coverage under a health insurance plan while absent to perform service. Rights under pension plans are similarly protected. Upon reemployment, each period served by a covered employee in the uniformed services shall be considered service with the employing office for purposes of determining the accrual of benefits and the nonforfeiture of benefits under the plan.

## 6. Intimidation or Reprisal

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Intimidation, reprisal, or discrimination against a covered employee for opposing practices or for initiating or participating in a proceeding is prohibited.

## 7. Remedies

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In case of a violation, several kinds of remedies may be available:

- ◆ The employing office may be required to comply with the USERRA requirements made applicable by the CAA
- ◆ The employee may receive compensation for any loss of wages or benefits
- ◆ The employee may receive liquidated damages equal to the amount of lost wages and benefits in situations where the failure to comply was willful
- ◆ Remedies available under “full equity powers” of the court, including temporary or permanent injunctions, temporary restraining orders, and contempt orders

Covered employees may also utilize any provisions of chapter 43 of title 38, United States Code that are applicable to that employee.